

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JOHN K. O'CONNOR,) 3:07-CV-00494-ECR-VPC
Plaintiff,)
v.) **ORDER**
ROBERT E. ESTES, District)
Judge for Churchill County,)
State of Nevada; STATE OF)
NEVADA, DEPARTMENT OF HEALTH)
AND HUMAN SERVICES; and)
MICHAEL J. WILLDEN, Director,)
NEVADA DEPARTMENT OF HEALTH)
AND HUMAN SERVICES,)
Defendants.)

Plaintiff O'Connor failed to pay child support and the Nevada District Court found that he was in contempt of court. This pro se action involves Plaintiff's contentions that the child support order as well as the enforcement of that order in state court violated federal law. Defendants Judge Robert E. Estes and Michael Willden have each filed motions to dismiss (#4, #10) pursuant to Rules 12(b)(1) and 12(b)(6).

Defendants argue that Judge Estes is absolutely immune to any claim for damages, that the Rooker-Feldman doctrine deprives this

1 Court of jurisdiction over this case, that 42 U.S.C. § 666 creates
2 no private right of action, that the complaint is pleaded with
3 insufficient particularity and also fails to state a claim, and that
4 the statute of limitations has run on all claims related to
5 activities occurring prior to October 22, 2005.

6 The jurisdictional issue must precede all others and, for the
7 reasons stated below, is dispositive. Defendants' motions to
8 dismiss (#4, #10) must be **GRANTED**.

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10 **I. Standard for Dismissal for Lack of Jurisdiction (Rule
11 12(b)(1))**

12 A motion to dismiss for lack of jurisdiction may attack the
13 sufficiency of the complaint, or it may be made as a "speaking
14 motion" attacking the existence of jurisdiction as a matter of fact.
15 Thornhill Pub. Co., Inc. v. Gen. Tel. & Elecs. Corp., 594 F.2d 730,
16 733 (9th Cir. 1979). In either case, the burden of proving
17 jurisdiction is on the Plaintiff. Id. "Where the jurisdictional
18 issue is separable from the merits of the case, the judge may
19 consider the evidence presented with respect to the jurisdictional
20 issue and rule on that issue, resolving factual disputes if
21 necessary." Id. However, absent an evidentiary hearing, the
22 plaintiff "need only make a prima facie showing of jurisdiction to
23 survive the motion to dismiss." Mattel, Inc. v. Greiner & Hausser
24 GmbH, 354 F.3d 857, 862 (9th Cir. 2003). Absent an evidentiary
25 hearing, the non-movant's version of any contested facts must be
26 taken as true. Rhodes v. Avon Prods., Inc., 504 F.3d 1151, 1160
27 (9th Cir. 2007).

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1 **II. The Rooker-Feldman Doctrine**

2 "Rooker-Feldman is a powerful doctrine that prevents federal
3 courts from second-guessing state court decisions by barring the
4 lower federal courts from hearing de facto appeals from state-court
5 judgments. . ." Bianchi v. Rylaarsdam, 334 F.3d 895, 898 (9th Cir.
6 2003). "If the constitutional claims presented to a United States
7 District Court are inextricably intertwined with the state court's
8 denial in a judicial proceeding of a particular plaintiff's
9 application [for relief], then the District Court is in essence
10 being called upon to review the state court decision. This the
11 District Court may not do." D.C. Court of Appeals v. Feldman, 460
12 U.S. 462, 483 n.16 (1983) (modification supplied); see also Rooker
13 v. Fidelity Trust Co., 263 U.S. 413 (1923); 28 U.S.C. § 1257.

14 15 **III. Analysis**

16 In Count I of Plaintiff's Amended Complaint (#2), Plaintiff
17 alleges that Judge Robert E. Estes denied Plaintiff a variety of
18 statutory and constitutional rights in proceedings related to his
19 child support obligations. Plaintiff contends that the Nevada
20 District Court lacked subject matter jurisdiction to increase his
21 child support and, in turn, lacked jurisdiction when it found that
22 he was in contempt of court. Plaintiff asserts that he had a
23 defense, claim preclusion, which was ignored when the Nevada
24 District Court entered what he alleges is an invalid or void child
25 support order. This Court lacks jurisdiction over this direct
26 attack on the Nevada District Court's judgment. See, e.g., Wolfe v.
27 Strankman, 392 F.3d 358, 363 (9th Cir. 2004) ("If a federal

1 plaintiff asserts as a legal wrong an allegedly erroneous decision
2 by a state court, and seeks relief from a state court judgment based
3 on that decision, Rooker-Feldman bars subject matter jurisdiction in
4 federal district court.”).

5 In Count II, also against Judge Estes, Plaintiff alleges that
6 the Nevada District Court failed to consider Plaintiff’s injuries
7 and incapacity to work, which Plaintiff alleges was a violation of
8 42 U.S.C. § 666(a)(15)(B) and the Fourteenth Amendment. Plaintiff
9 re-alleges that the Nevada District Court lacked subject matter
10 jurisdiction. Plaintiff further contends that the Nevada District
11 Court made no finding that it had subject matter jurisdiction.
12 Plaintiff appears to believe that he is entitled under
13 Rooker-Feldman to raise any challenge to the state courts’ judgments
14 that was not explicitly ruled on by the state court. This is
15 incorrect. However, the Court notes that Plaintiff’s allegation
16 that the issue of subject matter jurisdiction was not previously
17 litigated is misleading. The Nevada Supreme Court denied
18 Plaintiff’s petition for a writ of prohibition or mandamus, finding
19 that “the district court had subject matter jurisdiction in this
20 matter.” This Court lacks jurisdiction over Count II.

21 In Count III, Plaintiff alleges that Michael J. Willden,
22 Director of the Nevada Department of Health and Human Services,
23 failed to implement procedural safeguards to ensure compliance with
24 42 U.S.C. § 666, and that this resulted in a violation of
25 Plaintiff’s Fourteenth Amendment rights to due process and equal
26 protection. On this count, and this count alone, the Amended
27 Complaint does not facially trigger the Rooker-Feldman doctrine. A
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1 review of the record, however, reveals that this Court lacks
2 jurisdiction over this claim as well.

3 The Court notes that Plaintiff has objected to Defendants'
4 submission of the Nevada courts' various orders from the prior state
5 court litigation. Plaintiff argues that these documents are
6 "unauthenticated" because they are void and therefore cannot be
7 given full faith and credit. This is an issue of validity, not
8 authenticity. The purported evidentiary objection is merely a
9 reiteration of the other collateral attacks on the state court
10 judgments. The objection is meritless.

11 The record reveals that Count III is also an attempt to seek
12 relief from a state court judgment. The contentions in Count III
13 mirror Plaintiff's contentions in O'Connor v. Dept. of Human
14 Resources, No 25432, Third Judicial District Court. The Nevada
15 District Court dismissed that case with prejudice on August 5, 1999.

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17 **IV. Conclusion**

18 This Court lacks jurisdiction to consider Plaintiff's
19 allegations. **IT IS, THEREFORE, HEREBY ORDERED** that Defendants
20 motions to dismiss (#4, #10) are **GRANTED**. The clerk shall enter
21 judgment for Defendants and close the case.

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23 DATED: This 25th day of July, 2008.

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26 UNITED STATES DISTRICT JUDGE
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